

Department of Energy

§ 1022.3

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

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AUTHORITY: E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

SOURCE: 44 FR 12596, Mar. 7, 1979, unless otherwise noted.

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council (40 FR 6030, Feb. 10, 1978). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking. It is the intent of both Executive orders that Federal agencies implement the floodplain/wetlands re-

quirements through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to compliance with E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain/wetlands factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in floodplain/wetlands, providing opportunity for early public review of such proposed actions, preparing floodplain/wetlands assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures.

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

(b) Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the hazard and risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with the standards and criteria set forth in, and consistent with the intent of, the regulations promulgated by the Federal Insurance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*;

(5) Minimize the destruction, loss, or degradation of wetlands;

(6) Preserve and enhance the natural and beneficial values of wetlands;

(7) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property which has suffered flood damage or is in an identified flood hazard area and which is used by the general public; and

(8) Prior to the completion of any financial transaction related to an area located in a floodplain, which is guaranteed, approved, regulated or insured by DOE, inform any private participating parties of the flood-related hazards involved.

(c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE in wetlands not located in a floodplain.

(d) Identify, evaluate, and, as appropriate implement alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and

(e) Provide opportunity for early public review of any plans or proposals for actions in floodplains and new construction in wetlands.

§ 1022.4 Definitions.

For purposes of this part:

(a) *Action* means any DOE activity, including, but not limited to:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) DOE-undertaken, financed, or assisted construction and improvements; and

(3) The conduct of DOE activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.

(b) *Base Flood* means that flood which has a 1 percent chance of occurrence in any given year (also known as a 100-year flood).

(c) *Critical Action* means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.

(d) *Environmental Assessment* (EA) means a document for which DOE is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, (2) aid DOE compliance with NEPA when no EIS is necessary, and (3) facilitate preparation of an EIS when one is necessary. The EA shall include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) *Environmental Impact Statement* means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.

(f) *Facility* means any man-placed item other than a structure.

(g) *Finding of No Significant Impact* (FONSI) means a document prepared by DOE which briefly presents the reasons why an action will not significantly effect on the human environment and for which an EIS therefore will not be prepared.

(h) *Flood or Flooding* means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(i) *Floodplain* means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

(j) *Floodplain Action* means any DOE action which takes place in a floodplain.

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(k) *Floodplain/Wetlands Assessment* means an evaluation consisting of a description of a proposed action, a discussion of its effects on the floodplain/wetlands, and consideration of alternatives.

(l) *Floodproofing* means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.

(m) *High Hazard Areas* means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

(n) *Minimize* means to reduce to the smallest degree practicable.

(o) *New Construction* for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.

(p) *Practicable* means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.

(q) *Public Notice* means a brief notice published in the FEDERAL REGISTER, and circulated to affected and interested persons and agencies, which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

(r) *Preserve* means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

(s) *Restore* means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(t) *Statement of Findings* means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes

steps to be taken to minimize harm to or within the floodplain.

(u) *Structure* means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(v) *Wetlands* means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflow, mudflats, and natural ponds.

(w) *Wetlands Action* means an action undertaken by DOE in a wetlands not located in a floodplain, subject to the exclusions specified at § 1022.5(c).

§ 1022.5 Applicability.

(a) This part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this part, review the alternatives identified in the environmental review or in the final EIS to determine whether an alternative action may avoid or minimize impacts on the floodplain/wetlands. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of alternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve floodplain values. DOE shall publish in the FEDERAL REGISTER, a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and

persons or groups known to be interested in the action.

(c) This part shall not apply to wetlands projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropriated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to proposed actions located in wetlands (not located in a floodplain), this part shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property.

(d) This part applies to activities in furtherance of DOE responsibilities for acquiring, managing, and disposing of Federal lands and facilities. When property in a floodplain or wetlands is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, DOE shall: (1) Identify those uses that are restricted under Federal, State, or local floodplains or wetlands regulations; (2) attach other appropriate restrictions to the uses of the property; or (3) withhold the property from conveyance.

(e) This part applies to activities in furtherance of DOE responsibilities for providing federally undertaken, financed, or assisted construction and improvements. Applicants for assistance shall provide DOE with an analysis of the impacts which would result from any proposed wetland or floodplain activity.

(f) This part applies to activities in furtherance of DOE responsibilities for conducting Federal activities and programs affecting land use, including but not limited to, water and related resource planning, regulating and licensing activity.

(g) This part ordinarily shall not apply to routine maintenance of existing facilities and structures on DOE property within a floodplain/wetlands since such actions normally have minimal or no adverse impact on a floodplain/wetlands. However, where unusual circumstances indicate the possibility of impact on a floodplain/wetlands, DOE shall consider the need for a floodplain/wetlands assessment for such actions.

(h) The policies and procedures of this part which are applicable to floodplain actions shall apply to all proposed actions which occur in a wetlands located in a floodplain.

Subpart B—Procedures for Floodplain/Wetlands Review

§ 1022.11 Floodplain/wetlands determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA requirements, DOE shall determine the applicability of the floodplain management and wetlands protection requirements of this part.

(b) In making the floodplain determination, DOE shall utilize the Flood Insurance Rate Maps (FIRM's) or the Flood Hazard Boundary Maps (FHBM's) prepared by the Federal Insurance Administration of the Department of Housing and Urban Development to determine if a proposed action is located in the base or critical action floodplain, as appropriate. For a proposed action in an area of predominantly Federal or State land holdings where FIRM or FHBM maps are not available, information shall be sought from the land administering agency (e.g., Bureau of Land Management, Soil Conservation Service, etc.) or from agencies with floodplain analysis expertise.

(c) In making the wetlands determination, DOE shall utilize information available from the following sources, as appropriate:

- (1) U.S. Fish and Wildlife Service National Wetlands Inventory;
- (2) U.S. Department of Agriculture Soil Conservation Service Local Identification Maps;
- (3) U.S. Geological Survey Topographic Maps;
- (4) State wetlands inventories; and
- (5) Regional or local government-sponsored wetland or land use inventories.

§ 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to §§ 1022.5 and 1022.11, that this part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information:

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(1) *Project Description.* This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and the nature and extent of the potential hazard shall be discussed.

(2) *Floodplain/Wetlands Effects.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wetlands, the effects on the survival, quality, and natural and beneficial values of the wetlands shall be evaluated.

(3) *Alternatives.* Alternatives to the proposed action which may avoid adverse effects and incompatible development in the floodplain/wetlands shall be considered, including alternate sites, actions, and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including but not limited to minimum grading requirements, runoff controls, design and construction constraints, and protection of ecology-sensitive areas shall be addressed.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is required, the floodplain/wetlands assessment shall be prepared concurrent with and included in the appropriate NEPA document.

(c) For floodplain/wetlands actions for which neither an EA or EIS is prepared, a separate document shall be issued as the floodplain/wetlands assessment.

§ 1022.13 Applicant responsibilities.

DOE may require applicants for a DOE permit, license, certificate, financial assistance, contract award, allocation or other entitlement to submit a report on a proposed floodplain/wetlands action. The report shall contain the information specified at § 1022.12 and shall be prepared in accordance with the guidance contained in this part.

§ 1022.14 Public review.

(a) For proposed floodplain/wetlands actions for which an EIS is required, the opportunity for early public review will be provided through applicable NEPA procedures. A Notice of Intent to prepare an EIS may be used to satisfy this requirement.

(b) For proposed floodplain/wetlands actions for which no EIS is required, DOE shall provide the opportunity for early public review through publication of a Public Notice, which shall be published in the FEDERAL REGISTER, as soon as practicable after a determination that a floodplain/wetlands may be affected and at least 15 days prior to the issuance of a statement of findings with respect to a proposed floodplain action. DOE shall take appropriate steps to inform Federal, State, and local agencies and persons or groups known to be interested in or affected by the proposed floodplain/wetlands action. The Public Notice shall include a description of the proposed action and its location and may be incorporated with other notices issued with respect to the proposed action.

(c) Following publication of the Public Notice, DOE shall allow 15 days for public comment prior to making its decision on the proposed action, except as specified in § 1022.18(c). At the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and the mitigating measures, taking into account all substantive comments received.

§ 1022.15 Notification of decision.

(a) If DOE finds that no practicable alternative to locating in the floodplain/wetlands is available, consistent with the policy set forth in E.O. 11988, DOE shall, prior to taking action, design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a brief (not to exceed three pages) statement of findings which shall contain:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

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- (3) A list of alternatives considered;
- (4) A statement indicating whether the action conforms to applicable State or local floodplain protection standards; and
- (5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require preparation of an EA or EIS, the statement of findings may be incorporated into the FONSI or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the FEDERAL REGISTER and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and areawide A-95 Clearinghouses for the geographic area affected.

§ 1022.16 Requests for authorizations or appropriations.

DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB, if a proposed action will be located in a floodplain or wetlands, whether the proposed action is in accord with the requirements of E.O. 11990 E.O. 11988, and these regulations.

§ 1022.17 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

§ 1022.18 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the FEDERAL REGISTER.

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(c) Where emergency circumstances, statutory deadlines, of overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived.

§ 1022.19 Selection of a lead agency and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, to identify the applicable regulations, and to establish procedures for interagency coordination during the environmental review process.

§ 1022.20 Public inquiries.

Inquiries regarding DOE's floodplain/wetlands activities may be directed to the Assistant Secretary for Environment, Department of Energy, Washington, DC 20545.

§ 1022.21 Updating regulations.

DOE shall periodically review these regulations, evaluate their effectiveness, and make appropriate revisions.

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